IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 942 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SANJAY MULUBHAI SOLANKI - Applicant(s)

Versus

ADDIDITONAL SECRETARY & 2 - Respondent(s)

==========

Appearance :

MR HETAL D HINDOCHA for Applicant(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
PUBLIC PROSECUTOR for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 15/12/2005

ORAL JUDGMENT

1. Sanjay Mulubhai Solanki-petitioner-externee has filed this petition challenging the order of

externment dated 10.11.2004 passed by Deputy Commissioner of Police, Rajkot city-respondent No.2 under the provisions of Bombay Police Act,1951 (hereinafter referred to as 'the Act') and has, further, prayed for appropriate writ or mandamus as well as certiorari to quash and set aside the order dated 19.05.2005 passed by Additional Secretary, Home Department, Sachivalaya, Gandhinagar-respondent No.1, confirming the order of externment passed by respondent No.2 externing the petitioner from the City of Rajkot, Rajkot Rural, Surendranagar and Jamnagar districts for a period of two years in this behalf.

2. The present petition was filed on 18.07.2005 and this Court issued RULE on 28.10.2005 and the same was made returnable within four weeks and that is why this matter has come up before this Court for hearing and final disposal.

3. Heard, Mr. Pravin Gondaliya, learned Advocate appearing on behalf of Mr. Hetal D. Hindocha , learned Advocate for the petitioner and Mr. Pujari, learned A.P.P. in this behalf.

4. Learned Advocate for the petitioner has

invited my attention to show-cause notice dated 05.06.2004 issued by respondent No.2 under the provisions of Section 56A of the Bombay Police Act. In the said show-cause notice four offences have been shown as registered against the petitioner-externee. First offence registered as being C.R. No.25/2001 at Gandhigram Police Satation dated 05.01.2002 punishable under the provisions of 504, 147, 148, 149, 307, 427, 354, 452, 143, 324 and 188 of the Indian Penal Code. Second offence registered as being C.R. No.7/01 at Gandhigram Police Statition dated 05.01.2002 punishable under the provisions of Section 65B and 65E of the Bombay Prohibition Act. Third offence registered as being N.C. No.67/02 at Gandhigram Police Statition dated 25.02.2002 punishable under the provisions of Section 302, 143, 147, 148, 149 and 188 of the Indian Penal Code. Fourth offence is registered as being C.R. No.57/04 at Malaviyanagar Police Statition punishable under the provisions of Section 323, 504 and 114 of the Indian Penal Code.

5. He further submitted that it was stated in the said show-cause notice that by committing such

offences petitioners is spreading terror and if he is allowed to continue his activities in the said area there will be disturbance of 'public order'. In this behalf, the authority has also recorded statements of four persons. Therefore, the order of externment is passed against the petitioner-externee.

6. Thereafter, the petitioner through his Advocate has replied to the said show-cause notice. In the reply it was stated that as regards first offence, the petitioner was acquitted by the Extra Assistant Sessions Judge, Rajkot on 27.11.2002 i.e. much prior to the issuance of show-cause notice. As far as second incident is concerned that pertains to prohibition which does not come within the jurisdiction of the Bombay Police Act. As regards third and fourth offences, they are N.C. cases which are not relevant to be considered for externment.

6.1 Thereafter, Deputy Commissioner of Police, Rajkot city-respondent No.2 passed order dated 10.11.2004 externing the petitioner from the City of Rajkot, Rajkot Rural, Surendranagar and Jamnagar districts for a period of two years in this behalf.

7. Learned Advocate for the petitioner has, further, submitted that even between 06.06.2004 to 09.11.2004 several representations were made by the petitioner before the respondent No.2. But, the same were not entertained.

8. Being aggrieved and dissatisfied with the said order, petitioner filed an appeal before state government through Deputy Secretary, Home Department-respondent No.2 for obtaining stay and the same was admitted and ad-interim relief granted vide order dated 18.12.2004. The said order granting ad-interim relief was later extended up to 31.01.2005. Thereafter, the appeal of the petitioner was disposed of by respondent No.1 by order dated 19.05.2005.

9. Learned Advocate for the petitioner has further stated that the order of externment passed by the externing authority is bad in law on the ground that show-cause notice was issued on 05.06.2004 and the order of externment was passed on 10.11.2004. Therefore, there is an unreasonable and unexplained delay of about six months in passing the order.

Learned Advocate for the petitioner has further submitted that even the externing authority has not given any reasons as to why there is an unreasonable and unexplained delay in passing the impugned order. Learned Advocate submitted that the externing authority has also not considered the provisions and objects of the Act, and therefore, in view of the long delay of about six months order of externment is liable to be quashed and set aside.

10. Learned Advocate for the petitioner has submitted that if there is unreasonable delay and the same is not explained, the order of externment is liable to be quashed and set aside. In support of the same, learned Advocate has placed reliance on one un-reported Division Bench judgment of this Court in Special Criminal Application No.1295 of 1994 decided on 24.06.1995 (Coram: K.J. Vaidya & S.D. Dave,J.J.)in the case of ***Vasantiben Mukeshbhai Rander Vs. State of Gujarat.*** He has also placed reliance on the Division Bench judgments of this Court in the case of ***Chothamal Sagansingh Rajput Vs. State of Gujarat and Others*** (Coram:C.J., P.R. Gokulakrishnan & R.J.

Shah,J.) reported in 1989 (30)(1) GLR 63 and another Division Bench Judgment of this Court (Coram: J.U. Mehta & B.J. Shethna,J.J.)in the case of Santosh Ramprasad Sharma Vs. Deputy Commissioner of Police, Crime Branch, Ahmedabad City, A'bad & The State of Gujarat reported in 1992 Cr. L.R. (Guj.) 360. He has further placed reliance on the decision of this Court in S.C.A. No.63 of 1996 in the case of ***Sitaben M. Thakore Vs. Deputy Commissioner of Police,*** decided by this Court (Coram: N.N. Mathur, J.)reported in 1997 Cr.Lr. (Guj.)139 GLH. He has further placed reliance on a recent judgment of this Court (Coram: K.M.Mehta,J.)decided on 01.12.2005 in Special Criminal Application No.1451 of 2005 in the case of ***Dilaji Bharthaji Vihol Vs. Deputy Commissioner of Police and Another***.

11. Learned Advocate for the petitioner has further submitted that in view of the scheme of the provisions of the Act and in view of the division bench judgments of this Court in the case of ***Vasantiben Mukeshbhai Rander(Supra)***and in the case of ***Chothamal Sagansingh Rajput*** (Supra) and also

judgments of this Court in the case of Santosh Ramprasad Sharma(Supra) and ***Sitaben M. Thakore*** (Supra) and also a recent judgment of this Court in the case of ***Dilaji Bharthaji Vihol*** (Supra), if there is an unreasonable and unexplained delay from the date of notice till passing of the order, then in view of the same order is liable to be quashed and set aside. Therefore, the impugned order of externment deserves to quashed and set aside.

12. On the other hand, Mr. Pujari, learned A.P.P. has tried to support the order of externment passed by the authority in this behalf and he has placed reliance on the division bench judgment of this Court in the case of Mukesh Gopal Patel Vs. N.I. Saiyed, Dy. Commissioner of Police, Ahmedabad and Another reported in 1987 (1) GLH (NOC)6.

13. He has also stated that when the authority has passed the order of externment they have to follow the rules of natural justice in this behalf.

14. I have considered the provisions of the Act

as well as division bench judgments and judgment of the learned single Judge in this behalf. I have also considered provisions of Section 56 and 59 of the Bombay Police Act. I have considered an unreported judgment of Division Bench judgment of this Court in the case of ***Vasantiben Mukeshbhai Rander***(Supra)and also another Division Bench Judgment of this Court in the case of ***Chothamal Sagansingh Rajput***(Supra), judgment of this Court in the case of Santosh Ramprasad Sharma(Supra) and also judgment of the learned Single Judge in the case of ***Sitaben M. Thakore***(Supra)in this behalf. I have also considered a recent judgment of this Court in the case of ***Dilaji Bharthaji Vihol***(Supra) in this behalf.

15. From the record it appears that in this case show-cause notice was issued on 05.06.2004 to which petitioner replied through advocate. Whereas the order of externment was passed on 10.11.2004. Therefore, there is a delay of about six months which has not been explained by the authority while passing the order of externment. Therefore, unexplained delay is fatal to the case and therefore order of externment

deserves to be quashed and set aside on this very ground of delay and taking over all view of the matter, particularly, provisions of externment.

16. In my view externing authority must satisfy subjectively that no witnesses are willing to come forward to depose against the petitioner before passing the order of externment. In this case the authority has passed order of externment after a great delay of about six months which could have been avoided in this behalf. Therefore, the order passed by the externing authority is unreasonable and unjustifiable in this behalf, and therefore, same deserves to be quashed and set aside.

17. It may also be noted that even the petitioner has filed an appeal before the appellate authority raising the very same ground of unreasonable and unexplained delay of about six months in passing the order of externment. But, the same is not considered by the appellate authority. On the contrary, by its order dated 19.05.2005 the appellate authority confirmed the order of externment passed against the petitioner. In view of the, non

consideration of this vital point by the appellate authority the order of the appellate authority confirming the order of externment also deserves to be quashed and set aside. More particularly, in view of the ratio laid down in the case of ***Vasantiben Mukeshbhai Rander***(Supra), ***Chothamal Sagansingh Rajput***(Supra), Santosh Ramprasad Sharma(Supra) and ***Sitaben M. Thakore***(Supra) and also recent judgment of this Court in the case of ***Dilaji Bharthaji Vihol***(Supra) the orders of externment passed by the externing authority and confirmed by the appellate authority are unreasonable and unjustifiable in this behalf, and therefore, both the orders deserve to be quashed and set aside.

18. In the result, this petition is allowed and order of externment dated 10.11.2004 passed by respondent No.2 externing the petitioner as well as order dated 19.05.2005 passed by respondent No.1 confirming the said order is quashed and set aside. Rules is made absolute accordingly with no order as to costs. Direct service permitted.

(K.M.MEHTA,J.)

Umesh/